

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS DIVISION  
HONOLULU, HAWAII

SPECIAL PROVISIONS, SPECIFICATIONS, PROPOSAL,  
CONTRACT AND BOND

FOR

MAINTENANCE OF LANDSCAPED AREAS  
H-1 FREEWAY, WAI'AU TO AIEA STREAM

PROJECT NO. H1E-01-04C

DISTRICT OF HONOLULU

ISLAND OF OAHU

2004

## TABLE OF CONTENTS

### Page No.

#### Notice to Bidders

Special Provisions.....	SP-1 - SP-6
-------------------------	-------------

#### Specifications (Serv.)

Section 1	Definition and Terms.....	1-1 - 1-4
Section 2	Proposal Requirements and Conditions.....	2-1 - 2-3
Section 3	Award and Execution of Contract.....	3-1 - 3-5
Section 4	Scope of Work.....	4-1 - 4-3
Section 5	Control of Work.....	5-1 - 5-3
Section 6	Control of Material and Equipment.....	6-1 - 6-3
Section 7	Legal Relations and Responsibility.....	7-1 - 7-4
Section 8	Prosecution and Progress.....	8-1 - 8-8
Section 9	Payment.....	9-1 - 9-2
Section 10	Maintenance of Landscaped Areas.....	10-1 - 10-7
Section 11	Sprinkler System Repair and Maintenance.....	11-1 - 11-2

Location Plan .....	12-1
---------------------	------

Proposal.....	PF-1 - PF-5
---------------	-------------

Proposal Schedule.....	PF-6 - PF-9
------------------------	-------------

## Forms

Contract

Performance Bond (Surety)

Performance Bond

Certificate for Performance of Services

Certification of Compliance for Final Payment (SPO Form 22)

Contractor Performance Rating

NOTICE TO BIDDERS  
(Chapter 103D, HRS)

SEALED BIDS for MAINTENANCE OF LANDSCAPED AREAS, H-1 FREEWAY, WAI'AU TO AIEA STREAM, PROJECT NO. H1E-01-04C, DISTRICT OF HONOLULU, ISLAND OF OAHU, will be received at the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813 until 2:00 P.M., November 18, 2004, at which time and place they will be publicly opened and read.

The scope of work consists of furnishing all labor, materials, tools, and equipment necessary for the maintenance of certain designated landscaped areas, including planter boxes, as applicable, within the highway right-of-way.

Bid documents may be examined at or borrowed from the above said office. Borrowed bid documents are to be returned in good condition within thirty (30) calendar days after the bid opening date.

Only proposals from bidders possessing a valid State of Hawaii Specialty Contractor's "C-27" License will be accepted. Bidder's attention is also directed to Section 2.1 of the Special Provisions regarding bidder's qualification.

An optional pre-bid meeting with an optional on-site inspection will be held at 9:00 A.M., November 4, 2004, at the Oahu District conference room, 727 Koko Street, Honolulu, Hawaii. The on-site inspection is to be conducted immediately after the meeting and may take more than one (1) day. All prospective bidders or their representatives (employees) are strongly encouraged to attend, but attendance is not mandatory.

The Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the U.S. Department of Transportation (Title 49, Code of Federal Regulations Part 21) issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that the contract entered into

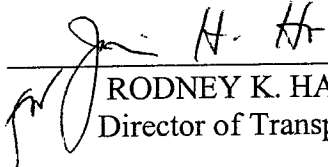
pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the grounds of race, color, religion, sex, national origin, age, or disability.

In accordance with Section 3-124-4, Hawaii Administrative Rules, the Hawaii Products Preference is applicable to this project. The Hawaii Product List may be examined at the State Procurement Office, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813.

Each proposal shall be on a form furnished by said Department.

For additional information, contact Leandro Manding at (808) 587-2184 or by facsimile at (808) 587-2524.

The State reserves the right to reject any or all proposals and to waive any defects in said proposals for the best interest of the public.



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RODNEY K. HARAGA  
Director of Transportation

Internet Posting:      October 22, 2004

State of Hawaii

Department of Transportation

**SPECIAL PROVISIONS**

## SPECIAL PROVISIONS

The specifications contained herein are amended as follows:

- A. SECTION 1 – DEFINITIONS AND TERMS is amended by adding the following new sections:

“1.39 ENGINEER – The Administrator of the Highways Division, acting directly or through his duly authorized representatives, who is responsible for engineering supervision of construction and other highway matters.

1.40 STANDARD SPECIFICATIONS – The Hawaii Standard Specifications for Road, Bridge and Public Works Construction, 1994, Highways Division, Department of Transportation, as amended, applies to these Specifications.”

- B. SECTION 2 – PROPOSAL REQUIREMENTS AND CONDITIONS is amended as follows:

2.1 QUALIFICATION OF BIDDERS is to be amended by adding the following therefor:

“Attention is directed to the provisions of Chapter 444, H.R.S., regarding the licensing of contractors in the State.

A C-27 Landscaping Contractor’s license is required for this project.

The Contractor shall have a minimum of two (2) years of C-27 Landscaping Contractor’s experience, immediately prior to the bid opening. The experience shall include a minimum of two (2) years experience in managing contracts similar to this project in size and scope prior to bid opening.

The Contractor, upon request from the Director or his representative, shall produce a list of similar projects to substantiate the Contractor’s experience. List shall contain a minimum of three (3) different landscape projects. The minimum of three (3) different landscape projects experience shall be positive on performance evaluation by the respective agency. Failure to submit this list will be grounds for rejection of bid. The determination of the Contractor’s qualification shall be made solely by the Director and the Director’s decision shall be final.”

2.7 DISQUALIFICATION OF BIDDERS is amended by adding the following:

“(f) Unsatisfactory Contractor performance rating by the Contractor on past work done for the Department of Transportation in the two (2) year period prior to the bid opening.”

Add the following new section:

“2.9 CERTIFICATE FOR PERFORMANCE OF SERVICES – Pursuant to Section 103-55, Hawaii Revised Statutes, and unless indicated otherwise, bidders should

submit the attached "Certificate for Performance of Services" in the event bids are in excess of \$25,000. The notarized certificate must be submitted to said Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813, before entering into a contract to perform services.

As of the bid opening date, salaries of State employees performing work similar to the work called for under this contract are as follows:

<u>Class</u>	<u>Salary Range</u>	<u>Minimum Hourly Pay Rate</u>
General Laborer I	BC-02	\$ 11.81
General Laborer II	BC-03	\$ 12.16
General Laborer III	WS-03	\$ 12.90
Truck Driver Laborer	BC-05	\$ 13.17
Truck Driver	BC-06	\$ 13.70
Nursery Worker II	WS-05	\$ 13.97
Plumber/Sprinkler Technician	BC-10	\$ 16.37
Highway Labor Supervisor	WS-10	\$ 17.37

The above information is provided to the Contractor for guidance only and is subject to change in accordance with existing collective bargaining contracts or shall change as contracts are renegotiated. It is the bidders responsibility to verify the accuracy of the wage rates contained herein and to provide for changes in the minimum wages, which must be paid to personnel working on this project at all times. Information on the status of Bargaining Unit (BU) contracts can be obtained from the State Department of Transportation, Highways Division, Personnel Management office (587-6320).

Bidders are further advised that they are not restricted to hire only those classifications of employees as listed, but are free to employ such other classifications of workers as the bidder deems proper and proposes to use on the project, as may be according to the bidder's common hiring practice. However, the principal duties of employees other than those listed hereinabove working on the project will be matched against those of State workers to determine the closest equivalent State employee classification, and the Contractor must compensate such employee(s) at a rate which is no less than that of the equivalent State employee."

C. SECTION 4 - SCOPE OF WORK is amended as follows:

4.2 PERFORMANCE OF WORK is amended by adding the following:

"The Contractor shall perform work satisfactorily in the judgment of the Director during the contract period. If it appears at any time that the work contracted to be performed is not satisfactory, the Director may require the Contractor to furnish and place in operation such additional force and equipment as the Director shall deem necessary to bring the work up to satisfactory status. In case the Contractor fails to comply after five (5) working days



from the date of receipt of such a written order from the Director, the Director may employ a working force and equipment and charge the Contractor for the reasonable cost thereof including depreciation for equipment or he may terminate the contract.”

D. SECTION 5 - CONTROL OF WORK is amended as follows:

5.3 COOPERATION OF CONTRACTOR AND DIRECTOR is amended by adding the following:

“The Contractor shall have at each work site, at all times when work is scheduled, a responsible individual who is able to understand and speak the English language. Such individual(s) shall have complete authority to communicate with the Inspector and to relate the Inspector’s instructions to the Contractor or his workers. The Contractor shall submit the name(s) of such individual(s) before starting work on the project and inform the Inspector in writing of any changes in such assigned responsibilities.

The Contractor shall furnish the State with a telephone number where he can be reached at all times during normal working hours. This is very important during the bidding period as well as the contract period.”

5.4 INSPECTION is amended by adding the following:

“The Contractor shall maintain all books, documents, papers, records and other evidence pertaining to payroll, employee’s name and social security number, wage rates and hours worked and to make such materials and information available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract, for inspection by the State. Failure to comply with the conditions of this Section during the contract period may result in cancellation of the contract.”

Add the following new section:

“5.7 CONTRACTOR PERFORMANCE RATING - The Contractor will be rated every three (3) months or more often as determined by the Engineer based on his performance for that period. The Contractor will be rated on nineteen (19) performance factors related to compliance with the contract specifications on administrative items and performance of field activities. Refer to the attached Contractor Performance Rating form at the end of Forms Section for the nineteen (19) performance factors.

An unsatisfactory rating for any factor may be reason for declaration of unsatisfactory performance and could result in contract cancellation and disqualification for two (2) years in accordance with Section 2.7 DISQUALIFICATION OF BIDDERS, paragraph (f) of the Special Provisions.

The Contractor may be permitted to continue working, if in the opinion of the Engineer that his performance will improve by the next three (3) month rating. An unsatisfactory rating at the six (6) month period of either the first or second term of the contract will be sufficient reason for not extending the contract for an additional twelve (12) month period.”

E. SECTION 7 - LEGAL RELATIONS AND RESPONSIBILITY is amended as follows:

7.8 LABOR AND COMPENSATION REQUIREMENTS is amended by replacing the first paragraph with the following:

“7.8 LABOR AND COMPENSATION REQUIREMENTS - Wages paid each employee employed by the Contractor shall be no less than those specified in Section 2.9 of the Special Provisions. The Contractor shall submit certified payroll affidavits in the form approved by the Department, showing full information on the name of each employee who worked during the reporting period, their rates of pay, the number of hours worked, gross earnings and deductions made. Failure to comply with the conditions of this section during the contract period shall result in cancellation of the contract.

The Contractor shall be required to comply with the laws of the U.S. Immigration and Naturalization Service (USI&NS) and Section 103-57, Hawaii Revised Statutes, whichever is more severe. The Department reserves the right to periodically check the employable status of persons listed on the certified payroll certificates. Any person who is found to be an illegal alien (undocumented alien) under the laws of the USI&NS or Section 103-57, HRS, shall be immediately dismissed from the project and not be rehired until he or she is properly cleared.”

Add the following new section:

“7.11 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall conduct his maintenance operations with due regard to the convenience and safety of the public at all times. The protection of persons and property shall be provided by the Contractor.

Peak traffic hours as applied to this project shall be designated as the time intervals from 6:00 a.m. to 8:30 a.m. and from 3:00 p.m. to 6:00 p.m. daily except Saturdays, Sundays and holidays.

During the off-peak traffic hours, the lane nearest the work area may be closed as required for the Contractor’s operations. Not more than one (1) lane in any direction shall be closed.

During peak traffic hours, the roads shall be kept open to public traffic for the full width of the roadway. Contractors are not to park their vehicles on the shoulders of the H-1 Freeway, both directions.

The Contractor shall keep all lanes open to traffic during the non-working hours or days.

The closing of lanes shall be in accordance with all of the 'Rules and Regulations Governing the Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways', 'The Rules and Regulations Governing the Design, Construction and Maintenance of Public Streets and Highways', both as adopted by the Highway Safety Coordinator, State of Hawaii, and the current U.S. Federal Highway Administrative 'Manual on Uniform Traffic Control Devices (MUTCD) Part VI Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operations,' 1988, Edition of MUTCD Revision 3 September 1993 and any amendments or revisions thereof as may be made from time to time. The cost of closing traffic lanes under the conditions hereof shall be inclusive of the bid price for maintenance of landscaped areas in the Proposal Schedule.

The Contractor shall provide and maintain in good condition convenient access to driveways, parking areas, approaches, crossings, intersections and any structures and improvements as may be necessary or required.

No rubbish resulting from Contractor's operations, material or equipment shall be stored where it will interfere with the safe passage of public traffic. At the end of each day's work and at other times when maintenance operations are suspended for any reason, the Contractor shall remove all such rubbish, equipment and other obstructions to permit safe passage of public traffic and to keep the working area in a neat orderly condition.

The Contractor shall take all necessary precautions to protect all his/her employees and all other personnel from hazards and injuries. The rules and regulations promulgated by the Occupational Safety and Health Acts (OSHA) are not included herein, but are applicable and made part of these specifications."

F. SECTION 8 - PROSECUTION AND PROGRESS is amended as follows:

8.2 SUBCONTRACTING is amended in its entirety and the following substituted therefor:

"The Contractor shall give his personal attention to the fulfillment of the contract and shall keep the work under his control at all times.

The scope and nature of work required under this contract are such that any licensed Landscape Contractor (C-27) should be able to do all the work required without subcontracting any of it to others. This is particularly applicable, but not limited to, the repairing of sprinkler systems.

Any work, which falls outside of the authorized work of the C-27 license, may be subcontracted only upon approval of the Director. His decision shall be final. Payment of all costs for such subcontractor work shall be according to prices or arrangements agreed upon prior to authorization of such work in writing."

G. SECTION 9 - PAYMENT is amended as follows:

9.4 PROGRESS PAYMENT is amended by adding the following statement:

“To expedite processing of all payments for services rendered, the Contractor shall forward copies of the invoice as specified in Section 9.4, Progress Payment, of the Specification, to the District Engineer, Oahu District, Highways Division, Department of Transportation, 727 Kakoi Street, Honolulu, Hawaii 96819.

Each invoice shall include but not limited to the following information:

- (a) Contractor's name, address, and phone number.
- (b) Contract no., project no., and project title.
- (c) Bid item no., description of services, periods covered or date of service performed, quantity, unit price, amount, sub total, and total.
- (d) Deductions, as applicable, shall be included in the invoice as subtotal(s) and labeled as either (1) and/or (2) below:
  - (1) Retainage as specified in Section 9.2, Retainage/Deduction from Payment and Section 9.4, Progress Payments, of the Specifications.
  - (2) Deductions for failing to maintain the designated landscaped areas satisfactorily as specified in Section 10.8, Basis for Payment, of the Specifications, and/or Section 11.1 Sprinkler Maintenance Work.

The Contractor shall submit each month to the Department, certified copies of the payrolls within seven (7) days after the end of the month. The certification shall affirm that the payrolls are correct and complete. The certificates shall be forwarded to Oahu District to the address as specified above. Refer to Section 7.8, Labor Compensation Requirements, of the Special Provisions, for more information on payroll affidavits.

The Engineer shall forward an information copy of the approved invoice to Construction and Maintenance Branch, Highways Division, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.”

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

SPECIFICATIONS

## SECTION 1 - DEFINITION AND TERMS

Whenever the following pronouns are used in these specifications, or in any documents or instruments where these specifications govern, the intent and meaning shall be interpreted as follows:

1.1 ADDENDA - A written document which may be issued by the Director during the bidding period involving changes to the specifications and plans, if any, which shall be considered and made a part of the contract.

1.2 AIRPORTS DIVISION - Airports Division, Department of Transportation, State of Hawaii.

1.3 AWARD - The written acceptance of a proposal by the State.

1.4 BIDDER - Any individual, partnership, corporation or other legal entity, or combination thereof, submitting a proposal for the work contemplated, acting either directly or through a duly authorized representative.

1.5 CALENDAR DAY - Every day shown on the calendar. If no designation of calendar or working day is made, a day shall mean calendar day.

1.6 CHANGE ORDER - A written order issued by the Director to the Contractor requiring the contract work to be performed in accordance with a change or changes that may involve an adjustment in contract time and price or requiring performance of any unforeseen work essential to complete the contract.

1.7 CONTRACT - The written agreement between the State and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment.

The contract includes the (1) notice to bidders, (2) proposal, (3) contract form and contract bond, (4) specifications, (5) special provisions and plans, if any, (6) addenda, (7) notice to proceed, and (8) change orders and agreements that are required to complete the work, all of which constitute one instrument.

1.8 CONTRACT BOND - The approved form of security, executed by the Contractor and its Surety or Sureties, guaranteeing the completion of the work in accordance with the terms of the contract, and guaranteeing full payment of all claims for labor, materials, and supplies used or incorporated in the work.

1.9 CONTRACT TIME - The number of working days or calendar days allowed for completion of the contract, including authorized time extensions.

If a calendar date is specified as the date of completion in lieu of the number of working days or calendar days, the contract shall be completed by that date.

In case the contract is for a specified period of time, the contract time shall be for said specified period of time.

1.10 CONTRACTOR - The individual, partnership, corporation or other legal entity, or combination thereof, contracting with the State for performance of the prescribed work.

1.11 DEPARTMENT - The State Department of Transportation.

1.12 DIRECTOR - The Director of Transportation, acting either directly or through the Director's duly authorized representative.

1.13 EQUAL OR APPROVED EQUAL - Whenever this term is used in the specifications and plans, if any, it means a brand or article pre-qualified in accordance with Section 6.2 Trade Names and Alternates and which may be used in place of the one specified.

1.14 H.A.R. or HAR - Hawaii Administrative Rules.

1.15 H.R.S. or HRS - Hawaii Revised Statutes.

1.16 HARBORS DIVISION - Harbors Division, Department of Transportation, State of Hawaii.

1.17 HIGHWAYS DIVISION - Highways Division, Department of Transportation, State of Hawaii.

1.18 HOLIDAYS - The days which are set apart and established as State holidays pursuant to Section 8-1, H.R.S.

1.19 INSPECTOR - The Director's authorized representative assigned to make detailed inspections of contract performance and materials supplied.

1.20 NOTICE TO BIDDERS - The public announcement, as required by law, inviting proposals for the work to be performed or materials to be furnished.

1.21 NOTICE OF FINAL ACCEPTANCE - Written notice from the Director to the Contractor that the entire contract has been completed in all respects in accordance with the specifications and plans, if any, and any changes thereof previously approved by the Director.

1.22 NOTICE TO PROCEED - Written notice from the Director to the Contractor advising the Contractor of the date on which he is to begin the prosecution of the work.

1.23 PLANS - The contract drawings approved by the Director which show the location, character, dimensions and details of the work to be done and shall be a part of the contract.

1.24 PROCUREMENT OFFICER - The Director's duly authorized representative including project managers, project engineers and contract administrators assigned to prepare, evaluate and administer contracts for the purchasing of goods and services.

1.25 PROPOSAL (OR BID) - The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

1.26 PROPOSAL FORM - The approved format prepared by the Department or a facsimile thereof on which bids for the work must be prepared and submitted. (Reasonable facsimile acceptable for bidding.)

1.27 PROPOSAL GUARANTY - The security furnished with a proposal to guarantee that the bidder will enter into the contract and furnish all other requirements if the bidder's proposal is accepted.

1.28 QUALIFICATION QUESTIONNAIRE - The specified forms on which the bidder shall furnish required information as to the bidder's ability to perform and finance the work.

1.29 S.L.H. or SLH - Session Laws of Hawaii.

1.30 SPECIAL PROVISIONS - Revisions to the specifications. The specific clauses setting forth conditions or requirements peculiar to the project under consideration which are not thoroughly or satisfactorily stipulated in these specifications.

1.31 SPECIFICATIONS - The directions, provisions, and requirements pertaining to the method and manner of performing the work and to the quantities and qualities of materials to be furnished under the contract.

1.32 STATE - The State of Hawaii.



1.33 SUBCONTRACTOR - An individual, partnership, corporation, other legal entity, or any combination thereof, that enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

1.34 SUPERINTENDENT - The Contractor's representative who is responsible for and in charge of the work.

1.35 SURETY - The corporation, partnership or individual, other than the Contractor, executing a bond furnished by the Contractor and guaranteeing performance by the Contractor.

1.36 TITLES (OR HEADINGS) - The titles or headings of the Sections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation. Unless otherwise indicated, whenever the word "Section" is used, reference is being made to a Section in these specifications.

1.37 WORK - The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.

1.38 WORKING DAY - Any day, except Saturdays, Sundays and State holidays.

## SECTION 2 - PROPOSAL REQUIREMENTS AND CONDITIONS

### 2.1 QUALIFICATION OF BIDDERS - Prospective bidders must be capable of performing the work for which bids are called.

In accordance with Section 103D-310, HRS, the Department may require any prospective bidder to submit answers to questions contained in the "Standard Qualification Questionnaire for Prospective Bidders on Public Works Contracts" on the form furnished by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment. Whenever it appears to the Department, from answers to the questionnaire or otherwise, that the prospective bidder is not fully qualified and able to perform the intended work, the Department will, after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, refuse to receive or consider any bid offered by the prospective bidder. All information contained in the answers to the questionnaire shall be kept confidential. Questionnaire so submitted shall be returned to the bidders after serving their purpose.

Failure to complete the qualification questionnaire will be sufficient cause for the Department to disqualify a prospective bidder.

No person, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in payments owed to the State of Hawaii or its political subdivisions or is in default as a surety or failure to do faithfully and diligently previous contracts with the State.

### 2.2 REJECTION OF PROPOSALS CONTAINING ALTERATIONS, ERASURES, OR IRREGULARITIES - Proposals may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind.

When proposals are signed by any agent, other than the officer or officers of a corporation authorized to sign contract on its behalf or a member of copartnership, a Power of Attorney must be on file with the Department prior to opening bids or shall be submitted with the proposal; otherwise, the proposal may be rejected as irregular and unauthorized.

Members of a joint venture may be requested to supply the Department with a copy of their joint venture agreement or each member of the joint venture may be required to sign the proposal.

2.3 PROPOSAL GUARANTY - A proposal guaranty (bid bond) is not required except when specifically noted in the proposal section of the bid document.

When a proposal guaranty is required with a bid, it will be specifically stated in the proposal; and no proposal totaling \$25,000 or more will be considered unless accompanied by one of the following forms of bidder's security:

- A. a deposit of legal tender; or
- B. a surety bid bond underwritten by a company licensed to issue bonds in the State of Hawaii and submitted on the standard form provided herewith; or
- C. a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by and payable on demand to the State by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).
  - 1. The bidder may use these instruments only to a maximum of one hundred thousand dollars (\$100,000.00).
  - 2. If the required security or bond amount totals over one hundred thousand dollars (\$100,000.00), more than one instrument not exceeding one hundred thousand dollars (\$100,000.00) each and issued by different financial institutions shall be acceptable.
  - 3. The instrument shall be made payable at sight to the Department of Transportation, State of Hawaii.

According to Section 103D-323, HRS, the above shall be in a sum not less than five percent (5%) of the amount bid.

2.4 DELIVERY OF PROPOSALS - Each proposal shall be placed, together with the proposal guaranty when required, in an envelope and sealed and so marked as to indicate the identity of the project, the name and address of the bidder, and other required information and then delivered as indicated in the Notice to Bidders. Proposals will be received up to the time fixed in the Notice to Bidders for the opening of bids.

2.5 WITHDRAWAL OF PROPOSALS - Any proposal may be withdrawn at any time prior to the time fixed in the Notice to Bidders for the opening of proposals upon the filing of a written request therefore with the Department, executed by the bidder or a duly authorized representative. The withdrawal of a proposal shall not preclude a bidder from submitting a new proposal.

2.6 PUBLIC OPENING OF PROPOSALS - Proposals will be opened and read publicly at the time and place indicated in the Notice to Bidders. Bidders or their authorized agents are invited to be present.

2.7 DISQUALIFICATION OF BIDDERS - Any of the following reasons may be considered as being sufficient grounds for the disqualification of a bidder and the rejection of his proposal or proposals.

A. More than one proposal for the same work from an individual, firm, or corporation under the same or different name.

B. Evidence of collusion among bidders. Participants in such collusion will receive no recognition as bidders for any future work of the Department until such participant shall have been reinstated as a qualified bidder.

C. Evidence of assistance from a person who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned, pursuant to Section 84-15, H.R.S.

D. Lack of proposal guaranty.

E. Unsigned proposal or proposal not signed in ink by person or persons legally authorized to submit a proposal on behalf of the bidder.

2.8 MATERIAL GUARANTY - The bidder may be required to furnish a complete statement of the origin, composition and manufacture of any or all materials to be used in the prosecution of the work, together with samples. Such samples may be subjected to tests to determine their quality and fitness for the work.

## SECTION 3 - AWARD AND EXECUTION OF CONTRACT

**3.1 AWARD OF CONTRACT** - The State reserves the right to reject any and all proposals and to waive any defects as may be deemed to be in the best interest of the public.

The award of contract, if it be awarded, will be made within sixty (60) calendar days after the opening of bids to the lowest responsive and responsible bidder whose proposal complies with all the prescribed requirements. The successful bidder will be notified, by letter mailed to the address shown on its proposal, that its proposal has been accepted and it has been awarded the contract.

**Requirement for award.** To be eligible for award, the apparent low Bidder will be contacted to submit copies of the documents listed below to demonstrate compliance with Section 103D-310(c), HRS. The documents should be submitted to the Department as soon as possible. If a valid certificate/clearance is not submitted on a timely basis for award of a contract, a Bidder otherwise responsive and responsible may not receive the award.

### **A. Tax Clearance.**

Pursuant to §§103D-310(c), 103-53 and 103D-328, HRS, the successful Bidder shall be required to submit a certified copy of its tax clearance issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) to demonstrate its compliance with Chapter 237, HRS. The tax clearance is valid for six (6) months from the most recent approval stamp date on the tax clearance. The tax clearance must be valid on the bid's first legal advertisement date or any date thereafter up to the bid opening date.  
DOTAX Website (Forms & Information):

<http://www.state.hi.us/tax/alphalist.html#a>

To receive DOTAX Forms by Fax or mail, phone (808)587-7572 or 1-800-222-7572.

The application for the clearance is the responsibility of the Bidder, and must be submitted directly to the DOTAX or IRS and not to the Department.

### **B. DLIR Certificate of Compliance.**

Pursuant to §103D-310(c), HRS, the successful Bidder shall be required to submit a copy (faxed copies are acceptable) of its approved certificate

of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR) to demonstrate its compliance with unemployment insurance (Chapter 383, HRS), workers' compensation (Chapter 386, HRS), temporary disability insurance (Chapter 392, HRS), and prepaid health care (Chapter 393, HRS). The certificate is valid for six (6) months from the most recent approval stamp date on the certificate. The DLIR certificate must be valid on the bid's first legal advertisement date or any date thereafter up to the bid opening date. For DLIR certificates which receive a "pending" approval stamp, a DLIR approval stamp is required prior to the issuance of the Notice to Proceed.

The *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 is available at the following website:

[www.dlir.state.hi.us](http://www.dlir.state.hi.us)

The form is also available at the DLIR Administrative Services Office, phone no. (808)586-8888 and fax no. (808)586-8899, or any of its District Offices. The DLIR will return the form to the Bidder who in turn shall submit a copy to the Department.

The application for the certificate is the responsibility of the Bidder, and must be submitted directly to the DLIR and not to the Department.

#### **C. DCCA Certificate of Good Standing.**

Pursuant to §103D-310(c), HRS, the successful Bidder shall be required to submit a copy (faxed copies are acceptable) of its approved Certificate of Good Standing issued by the Hawaii State Department of Commerce and Consumer Affairs (DCCA), Business Registration Division (BREG) to demonstrate that it is either:

- (1) incorporated or organized under the laws of the State; or
- (2) registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

The DCCA certificate is valid for six (6) months from the approval date on the certificate. The

DCCA certificate must be valid on the bid's first legal advertisement date or any date thereafter up to the bid opening date. A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. Bidders are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the DCCA.

To obtain this certificate, go online to: [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com) and follow the prompt instructions. To register or to obtain a certificate by phone, call (808)586-2727 (M-F 7:45 am to 4:30 pm Hawaii Standard Time).

The application for the DCCA certificate is the responsibility of the Bidder, and must be submitted directly to the DCCA and not to the Department.

3.2 CANCELLATION OF AWARD - The State reserves the right to cancel the award of any contract any time before the execution of said contract by all parties without any liability to the successful bidder or any other bidder.

3.3 RETURN OF PROPOSAL GUARANTY - All proposal guaranties, except those of the lowest two (2) bidders, will be returned immediately following the opening and checking of the proposals. The retained proposal guaranty of the second lowest bidder, if not a bid bond, will be returned within ten (10) calendar days following execution of contract by the successful bidder. The successful bidder's proposal guaranty, if not a bid bond, will be returned after a satisfactory contract bond has been furnished and the contract has been executed.

3.4 REQUIREMENT OF CONTRACT BOND - Only when required by the proposal, the successful bidder at the time of the execution of the contract shall file good and sufficient performance and payment bonds on the forms furnished by the Department, or a facsimile thereof, conditioned for the full and faithful performance of the contract in accordance with the terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished by them to it and use in the prosecution of the work provided for in such contract, in the manner, form and amount required by Section 3-122-224(b)(2), H.A.R., which bonds shall be in an amount equal to fifty per cent (50%) of the contract price, including amounts estimated to be required for extra work, or in the case of price-term, open-end, or requirements contract under which the total amount to be paid to the Contractor cannot be accurately estimated at the time the contract is to be awarded, the bond amounts shall be as designated in the bid

documents. Such bonds shall also by their terms inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in the work so as to give them a right of action as contemplated by Section 103D-324, H.R.S.

The bidder shall limit the acceptable performance and payment bonds to the following:

(a) Legal tender; or

(b) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii; or

(c) A certificate of deposit; share certificate;; cashier's check; treasurer's check; teller's check drawn by or a certified check accepted by and payable on demand to the State by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).

1. The bidder may use these instruments only to a maximum of one hundred thousand dollars (\$100,000.00).

2. If the required security or bond amount totals over one hundred thousand dollars (\$100,000.00) more than one instrument not exceeding one hundred thousand dollars (\$100,000.00) each and issued by different financial institutions shall be acceptable.

3.5 EXECUTION OF CONTRACT - The contract and the "Certificate for Performance of Services", similar to a copy of the same annexed hereto, shall be executed by the successful bidder and returned, together with the contract bonds, when required, within ten (10) days after the award of the contract or within such further time as the Director may allow after the bidder has received the contract for execution.

Pursuant to Section 103D-309, H.R.S., the contract shall not bind the State in any way unless said contract has been fully and properly executed by all the parties thereto and the Comptroller has endorsed thereon a certificate that there is available an unexpended appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract.

3.6 FAILURE TO EXECUTE CONTRACT - Failure to execute the contract, Certificate for Performance of Services and file acceptable bonds, when required, within ten (10) days after



the award of the contract, or within such further time as the Director may allow, shall be cause for the cancellation of the award and the forfeiture of the proposal guaranty. Award of the contract may then be made to the next lowest responsible bidder.

## SECTION 4 - SCOPE OF WORK

4.1 WORK TO BE DONE - The work to be done is described in the Section(s) following Section 9 of these specifications.

4.2 PERFORMANCE OF WORK - The Contractor shall employ, so far as possible, such methods and means in carrying out his work so as not to cause any interruption, disturbance, or interference with the public.

In case the Contractor is performing work in a building, the Contractor shall conduct the work in such a manner so as not to cause any interruption, disturbance, or interference with the business activities of the tenants in the building.

4.3 EXTRA WORK - New and unforeseen items of work will be classed as extra work when they cannot be covered by any of the various items for which there is a bid price.

### 4.4 CHANGES AND CLAIMS FOR ADJUSTMENT

A. Change order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

1. Drawings, designs, or specifications, if the goods to be furnished are to be specially manufactured for the State in accordance therewith;
2. Method of shipment or packing;
3. Place of delivery;
4. Changes in the work within the scope of the contract; or
5. Changes in the time of performance of the contract that do not alter the scope of work.

B. Adjustments of price or time for performance. If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the procurement officer promptly and duly make the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have

prejudiced any claim for additional compensation, or an extension of time for completion.

C. Time period for claim. Within thirty (30) days after receipt of a written change order under subsection (a) unless the period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State or county is prejudiced by the delay in notification.

D. Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

E. Other claims not barred. In the absence of a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim as under the contract or for breach of contract.

#### 4.5 PRICE ADJUSTMENT

Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

A. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

B. By unit prices specified in the contract or subsequently agreed upon;

C. By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

D. In such other manner as the parties may mutually agree; or

E. In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126 of the Hawaii Administrative Rules.

#### 4.6 VARIATION IN QUANTITY

Upon agreement of the parties, the quantity of goods or services or both specified in this contract may be increased by a maximum of ten (10) percent provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable and (2) the procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

## SECTION 5 - CONTROL OF WORK

5.1 AUTHORITY OF DIRECTOR - The Director shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed; the manner of performance and rate of progress of the work; the compensation for work performed; the interpretation of the contract and the fulfillment of the contract on the part of the Contractor. The Director's decision shall be final and the Director shall have the authority to enforce any such decision and order which the Contractor fails to carry out promptly and diligently. The Director shall have the following powers in the way of enforcement:

- A. The right to suspend the work.
- B. The right to withhold payment due the Contractor.

5.2 COORDINATION OF PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS - These specifications, the plans, special provisions, and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to describe and provide for the complete work.

5.3 COOPERATION OF CONTRACTOR AND DIRECTOR - The Contractor shall have available at the work site at all times, a copy of the specifications, special provisions and plans. The Contractor shall give the work constant attention to facilitate the progress thereof and shall cooperate with the Director in every way possible.

Before starting work on the project, the Contractor shall designate in writing a superintendent who shall have complete authority to represent and to act for the Contractor.

5.4 INSPECTION - The Director at all times shall have access to the work during its prosecution and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of these specifications and special provisions. All work done and all materials furnished shall be subject to the Director's inspection and approval.

The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill its contract as prescribed, and defective work shall be made good and unsuitable materials may be rejected, notwithstanding that such defective work and materials may have been previously overlooked by the Director and accepted or included in an estimate for payment.

Projects financed in whole or in part with Federal funds shall be subject to inspection at all times by representatives of the Federal agency involved.

5.5 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK - All work which has been rejected shall be corrected or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed the Contractor for such correction or removal and replacement. Upon failure on the part of the Contractor to comply promptly with any order of the Director, the Director may cause any rejected work to be corrected or removed and replaced and to deduct the costs thereof from any monies due or to become due the Contractor.

5.6 CLAIMS AND DISPUTES - The Contractor may give notice in writing to the Director for claims that extra compensation, damages, or an extension of time for completion is due the Contractor for one or more of the following reasons:

- A. Requirements not clearly covered in the contract, or not ordered by the Director as extra work;
- B. Failure between the State and the Contractor to agree to an adjustment in price for a contract change order issued by the State; or
- C. An action or omission on the part of the Director requiring performance changes within the scope of the contract.

The Contractor shall continue with performance of the contract in compliance with the directions or orders of the procurement officer, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- A. The notice in writing be given:
  - 1. Before the commencement of the work involved, if at that time the Contractor knows of such requirements or the occurrence of such actions or omissions; or
  - 2. Within thirty (30) calendar days after the Contractor knows of such requirements or the occurrence of such action or omission if the Contractor did not have such knowledge before the commencement of the work; or
  - 3. Within thirty (30) calendar days after receipt of the written contract change order that was not

agreed upon by both parties; or

4. Within such further time as may be allowed by the Director in writing.

B. The notice shall clearly state the Contractor's intention to make claim and the reasons why the Contractor believes that additional compensation, changes or an extension of time may be remedies to which the Contractor is entitled; and afford the Director every facility for keeping records of the actual cost of work. Failure on the part of the Contractor to give such notification or to afford the procurement officer proper facilities for keeping strict account of actual cost shall constitute waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the procurement officer shall not in any way be construed to prove the validity of the claim.

The Director will review the notice and render a decision. The Director's decision shall be final and conclusive unless, within thirty (30) calendar days from the date of the decision, the Contractor mails or otherwise furnishes a written appeal to the Director. The decision of the Director shall be final. Later notification of such claims shall not bar the Contractor's claim unless the State is prejudiced by the delay in notification. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given before final payment under this contract.

Any adjustment in the contract price made pursuant to this clause shall be determined according to Section 4.5 - Price Adjustment.

The provisions of this Section shall not be construed as establishing any claims contrary to the terms of Section 4.4 - Changes and Claims for Adjustment.

Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any state officers and any Contractors from acting in collusion or bad faith in issuing or performing contract change orders which are clearly not within the scope of the contract.

## SECTION 6 - CONTROL OF MATERIAL AND EQUIPMENT

6.1 DEFECTIVE MATERIALS - All materials not conforming to the requirements of these specifications or the special provisions shall be considered defective and all such materials, whether in place or not, shall be rejected. They shall be removed immediately from the site of the work, unless otherwise permitted by the Director. No rejected materials, the defects of which have been subsequently corrected, shall be used until approval in writing has been given by the Director. Upon failure on the part of the Contractor to comply promptly with any order to remove and replace defective materials, the Director may remove and replace defective material and to deduct the cost of removal and replacement from any monies due or to become due the Contractor.

6.2 TRADE NAMES AND ALTERNATES - For convenience in designation on the plans or in the specifications, certain equipment or articles or materials may be designated under a trade name or the name of a manufacturer and its information catalogue. The use of alternate equipment or an article or material which is of equal quality and of the required characteristics for the purposes intended will be permitted, subject to the written approval of the Director, in accordance with the following requirements:

A. QUALIFICATION BEFORE BID OPENING - When the specifications and/or plans specify one or more manufacturer's brand names of materials or equipment to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based its bid on one of the specified named products, except where such proprietary product are specified, alternate brands may be qualified if found equal or better by the Director. Bidders requesting qualification of alternate proprietary products must submit a request to the Director for review and approval at the earliest date possible, but in any event, such request must be received at the Contracts office not later than ten (10) days before the bid opening date, not including the bid opening date.

It shall be the responsibility of the bidder to submit sufficient evidence based upon which a determination can be made by the Director that the alternate brand is qualified. The evidence shall be transmitted with a covering letter which shall list the evidence submitted and the items for which the substitution is requested.

If the evidence accompanying a request for substitution is insufficient to qualify a particular



model, the request shall be denied provided that further evidence may be submitted to qualify the item five (5) days prior to the bid opening date if the initial request was made prior to the deadline set above.

B. SUBSTITUTION AFTER BID OPENING - Substitution of material or equipment will not be allowed after the bid opening date except under the following unforeseen circumstances:

1. If a specified or pre qualified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion.

2. If a specified or pre qualified item is found to be unusable due to change or other circumstances.

3. If the Contractor is willing to provide a more recently developed or manufactured item of material or equipment of the same manufacturer which the Director determines to be equal or better than the one specified or pre-qualified.

A substitution request, regardless of reason, shall be fully explained in writing by the Contractor and shall include its justification for said request, the quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Any savings in cost will accrue to the State and any additional cost for the substituted items will be paid by the Contractor.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles, or materials shall be upon the bidder or Contractor and bidder or Contractor shall furnish, at its own expense, all information necessary or related thereto as required by the Director. The Director shall be the sole judge as to the comparative quality and suitability of alternate equipment, articles or materials and the Director's decisions shall be final.

The above shall not be construed to mean that substitution for brand name specified materials and equipment will be allowed; the Director reserves the right to deny any request he deems irregular or not in the best interest of the State.

6.3 ASSIGNMENT OF ANTITRUST CLAIMS FOR OVERCHARGES FOR GOODS AND MATERIALS PURCHASED

A. Vendor and purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and which are not passed on to the purchaser under an escalation clause.

B. Contractor and owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, contractor hereby assigns to owner any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and any change order. In addition, contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to owner, subject to the aforementioned exception.

## SECTION 7 - LEGAL RELATIONS AND RESPONSIBILITY

7.1 LAWS TO BE OBSERVED - The Contractor shall comply with all federal, state, city and county laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto effective as of the date of the call for sealed proposals.

The Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State, its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules or regulations. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any law, ordinance, rule, regulation, order or decree, the Contractor shall forthwith report the same to the Director in writing.

7.2 PERMITS AND LICENSES - The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

7.3 PATENTS - The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work, and shall hold harmless, indemnify, defend and where appropriate, insure the State, its officers, agents and employees from all suits at law or actions of every nature, for or on account of the use of any patented materials, equipment, devices or processes.

7.4 RESPONSIBILITY FOR INJURY AND DAMAGE - The State, its officers, agents and employees shall not be held accountable in any manner for any loss or damage to the work or any part thereof, or for any of the materials and equipment used or employed in performing the work, or for any injury to any person or persons either workers or the public, or for any damage to property caused by the Contractor or its workers or any one employed by the Contractor. The Contractor shall be responsible for any liability imposed by law for any injury to any person or any damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance. The acceptance of the completed work of the Contractor by the Director shall not relieve the Contractor from any liability which may have accrued or may accrue as a result of the performance of the work by the Contractor. The Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State, its officers, agents and employees, from all suits or actions of every name, kind and description, brought for or on account of

any injuries or damages sustained by any persons or property caused by the Contractor, its servants or agents, or by or on account of any act or omission of the Contractor or its servants or agents, regardless of whether such actions or any claim is brought against them or any one of them before or after the final acceptance of the work. In addition to any remedy authorized by law, the State may withhold payment of any money due to Contractor as shall be reasonable until disposition has been made of any suits or claims for injuries or damages.

It is not the intention of the parties to this contract to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injuries or property damage based on a contract theory of liability. In any event, the Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State from suits and claims for personal injuries or property damage where such injuries or damage are caused by the negligent acts or omissions of the Contractor, its agents or employees.

7.5 COOPERATION BETWEEN CONTRACTORS - Where two or more Contractors are employed on related or adjacent work, each shall conduct its operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

7.6 CONTRACTOR'S RESPONSIBILITY FOR WORK - Until the acceptance of the contract, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all damages to any portion of the work occasioned by any of the above causes before its completion and acceptance and shall bear the expenses thereof.

7.7 NO PERSONAL LIABILITY - Neither the Director nor any other officer or authorized employee of the Department shall be personally responsible for any liability arising under the contract.

7.8 LABOR AND COMPENSATION REQUIREMENTS - Wages paid each laborer employed by the Contractor or any subcontractor shall not be less than the prevailing minimum wage rate prescribed by law.

Every laborer employed by the Contractor or any subcontractor whose rate of compensation is Five Dollars (\$5.00) or less per day shall be paid his wages weekly pursuant to Section 103-54, H.R.S.

The Contractor's attention is directed to Chapter 377, H.R.S., Hawaii Employment Relations Act; Chapter 378, H.R.S., Employment Practices; Chapter 383, H.R.S., Hawaii Employment Security Law; Chapter 386, H.R.S., Workers' Compensation Law; Chapter 387, H.R.S., Wage and Hour Law; Chapter 392, H.R.S., Temporary Disability Insurance; Chapter 393, H.R.S., Prepared Health Care Act; Chapter 396, H.R.S., Occupational Safety and Health; and Section 103-55, H.R.S., Wages, Hours, Working Conditions of Employees of Contractor's Supplying Services.

7.9 INSURANCE - Prior to commencing with the work, the Contractor shall, at its own expense, obtain and submit to the Department, three (3) copies of a Certificate of Insurance from an insurance company or agency licensed in the State of Hawaii, showing full policy coverage of the Contractor for:

- A. Workers' Compensation;
- B. Comprehensive Automobile Liability:  
Minimum limit of \$1 million combined single limit per accident for bodily injury and property damage with the State of Hawaii named as additional insured.
- C. Commercial General Liability (Occurrence form):  
Minimum limit of \$1 million combined single limit per occurrence with the State of Hawaii named as additional insured.

All policies must provide that 30 days prior written notice of cancellation or material change in coverage be given to certificate holders stated above.

Such insurance when accepted by the Director in writing shall become applicable and shall remain unmodified throughout the entire term of the contract. Such insurance aforementioned shall cover the State for all work performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including other work performed outside of the work area, and all change orders.

Any delay in the submission and approval of insurance certificates shall not be justification of or grounds for a request by the Contractor postponing the issuance of a notice to proceed notwithstanding the fact that the Contractor shall not be allowed to proceed with the work until said certificates are submitted and approved.

Failure to obtain insurance in accordance with the Section, on the part of the Contractor, shall be considered a major breach of the contract; and should the State be forced to expend funds which would have been covered under the insurance, the Contractor agrees to assume the liability for such funds and to indemnify and hold the State harmless.

7.10 WORKERS' COMPENSATION - From the beginning of the work until its final acceptance, the Contractor shall insure all workers, directly or indirectly employed by the Contractor under this contract, from personal injury by accident.

## SECTION 8 - PROSECUTION AND PROGRESS

8.1 NOTICE TO PROCEED - A "Notice to Proceed" letter will be written to the Contractor by the Director. Such letter will indicate the date the Contractor is to begin work and from which date the contract time will commence to run.

The Contractor shall diligently perform the required duties during the term of the contract, or if the work is to be completed within a specified time limit, the Contractor shall diligently prosecute the work to completion within the specified time limit.

8.2 SUBCONTRACTING - The Contractor shall give its personal attention to the fulfillment of the contract and shall keep the work under its control.

Subject to Section 103D-302, H.R.S., the Contractor may subcontract a portion of the work pursuant to the provisions of this section, but the Contractor shall be primarily responsible for the work so subcontracted. The Contractor shall not subcontract any work to any subcontractor who has been suspended by the State.

Before any work is started under a subcontract, the Contractor shall have the written approval of the Director on a written statement on forms furnished by the Department, indicating the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be so subcontracted and showing that the subcontractors are particularly experienced and equipped to do the work subcontracted. The Contractor shall give assurance that the minimum wage rate schedule as stated in the contract shall apply to labor performed on the work so subcontracted. Consent of the Director to the subcontracting of work shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract.

When any portion of the work which has been subcontracted by the Contractor is not prosecuted in a manner satisfactory to the Director, the Contractor, upon receipt of a notice thereof in writing from the Director, shall remove the subcontractor immediately from the project and the subcontractor shall not again be employed on the work.

8.3 ASSIGNMENT OF CONTRACT - The performance of the contract may be assigned only with the prior written consent of the Director and when applicable, the Contractor's surety. Consent to any assignment shall not relieve the Contractor or the Contractor's surety of any obligations of the contract.

8.4 INSUBORDINATION - If any subcontractor or person employed by the Contractor shall fail or refuse to carry out the directions of the Director or shall appear to the Director to be incompetent or to act in a disorderly or improper manner, the subcontractor or person shall be removed immediately upon request by the Director and shall not again be employed on the work, nor shall it be employed upon any other Department project currently under contract to the same Contractor or subcontractor.

8.5 TEMPORARY SUSPENSION OF WORK

A. Order to stop work. The Director, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this section. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Director shall either:

1. Cancel the stop work order; or
2. Terminate the work covered by such order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.

B. Cancellation or expiration of the order. If a stop work order issued under this section is canceled or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly; if:

1. The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
2. The contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Director decides that the facts justify such



action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

C. Termination of stopped work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.

D. Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.

8.6 LIQUIDATED DAMAGES - It is mutually understood and agreed by and between the parties to the contract that the performance by the Contractor of its duties every calendar/working day is an essential part of the contract and in case of failure on the part of the Contractor to perform its duties for the time specified in the contract, the State will be damaged thereby and the amounts of said damages being difficult, if not impossible of definite ascertainment and proof, shall be estimated, agreed upon and fixed at the sum shown in the proposal for each and every calendar/working day that the Contractor fails to perform its duties during the period the contract is in effect; and the Contractor shall pay the liquidated damages as provided for in the proposal and, in case the same are not paid, the Department may deduct the amount thereof from any monies due or that may become due the Contractor under the contract.

#### 8.7 DEFAULT AND TERMINATION OF CONTRACT

A. Termination by Default. If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Director may notify the contractor in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Director, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Director may procure similar goods or services in the manner and upon terms deemed appropriate by the Director. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring

similar goods or services.

1. Contractor's duties. Notwithstanding termination of the contract and subject to any directions from the Director, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the State or county has an interest.

2. Compensation. Payment for completed goods delivered and accepted by the State shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and Director; if the parties fail to agree, the Director shall set an amount subject to the contractor's rights under chapter 3-126, HAR. The State may withhold from amounts due the contractor such sums as the Director deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

3. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the contractor has notified the Director within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were unreasonably obtained from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the Director shall ascertain the facts and extent of such failure, and if such officer determines that any failure to perform was

occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience". As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.

4. Erroneous termination for default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of the clause, or that the delay was excusable under the provisions of paragraph 3 above, Excuse for nonperformance or delayed performance of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

5. Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

B. Termination for convenience. The Director may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Director shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

1. Contractor's obligation. The contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Director may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

2. Right to goods. The Director may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Director:

- a. Any completed goods; and
- b. The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights hereinafter called "manufacturing material," as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The Contractor shall, upon direction of the Director, protect and preserve property in the possession of the contractor in which the State has an interest. If the Director does not exercise this right, the contractor shall use the Contractor's best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the State has breached the contract by exercise of the termination for convenience clause.

3. Compensation:

- a. The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Director may pay the Contractor, if at all, an amount set in accordance with subparagraph c. below.
- b. The Director and the Contractor may agree to settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of goods and manufacturing materials under paragraph (2) of this clause, and the contract price of the work not terminated.

c. Absent complete agreement under subparagraph b above, the Director shall pay the Contractor the following amounts, provided payments agreed to under subparagraph b shall not duplicate payments under this subparagraph for the following:

(i) Contract prices for goods or services accepted under the contract;

(ii) Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph 1 of this clause. These costs must not include costs paid in accordance with subparagraph (ii) above.

(iv) The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price plus the reasonable settlement cost of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph b of this paragraph, and the contract price of work not terminated.

d. Cost claimed, agreed to, or established under subparagraphs b and c shall be in accordance with chapter 3-123, HAR. bearing on such claim.

8.8 FINAL INSPECTION - Upon notice from the Contractor of the completion of the work or contract, the Director shall make an inspection. If the contract is found completed to the Director's satisfaction, such inspection shall constitute the final inspection and acceptance of the work.

If the work is unsatisfactory in whole or in part, the Director shall notify the Contractor of the work necessary for final completion and acceptance and the Contractor shall forthwith perform the work required by the Director. Upon performance of such required work by the Contractor, another inspection shall be made which shall constitute the final inspection if the work is completed satisfactorily.

Within ten (10) days after final inspection and acceptance of the work, or as soon thereafter as is practicable, the Contractor shall be notified by the Director in writing of such acceptance.

8.9 TERMINATION OF CONTRACTOR'S RESPONSIBILITY - The contract will be considered complete when all work has been completed, the final inspection made, the work accepted by the Director, and the final estimate paid. The Contractor will then be released from further obligation except as set forth in the contract and bond, when applicable.

## SECTION 9 - PAYMENT

9.1 SCOPE OF PAYMENT - The Contractor's bid price shall be inclusive of all costs, direct or indirect, including all taxes, required for the fulfillment of the contract.

Contract payments to the Contractor by the State shall be full payment for the furnishing of all labor, tools, equipment, and other incidentals, including all taxes, necessary for performing all work and services contemplated and embraced under the contract.

9.2 RETAINAGE/DEDUCTION FROM PAYMENT - The Director may at any time retain or deduct out of any sums due the Contractor to cover claims of the State against the Contractor, or such sums sufficient to cover any unpaid claims of others supported by sworn statements filed in the office of the Director, without any liability for damages, interest or otherwise to the Contractor for such retention or deduction.

Provided the work of the Contractor is progressing satisfactorily in the judgment of the Director and in accordance with the provisions of this contract, monthly payments, less five percent (5%), will be made to the Contractor. The amount of such monthly payments shall be determined by the Director based on the Director's estimate of the items of work performed and materials incorporated in the work and the value therefor at the unit prices or lump sum prices set forth in the contract. All monthly payments are shall be subject to correction at any time prior to or in the final payment.

At any time after fifty per cent (50%) of the work has been completed, if the State determines that the work contracted to be performed is progressing satisfactorily, the State may make any of the remaining monthly payments in full.

If the Director finds that unsatisfactory progress is being made, the State may, from the beginning of such unsatisfactory progress, withhold any amount up to five per cent (5%) of any subsequent monthly payment.

9.3 ASSIGNMENT OF PAYMENTS - All monies payable under the contract, or any part thereof, shall be paid to the Contractor in accordance with the provisions of this Section and no assignment or order executed by the Contractor directing payment of any portion or all of such funds to any other person or persons shall be recognized by the State unless such assignment or order specifies the amounts to be so paid and the purposes for which the assignment or order is given. Such assignment or order shall have attached thereto, by endorsement or otherwise, the consent of the surety, when

applicable. No such assignment or order shall be binding on the State.

Any assignment of money shall, however, be subject to all proper set-offs in favor of the State, to all deductions provided for in the contract and to all liens and rights conferred by law on the State. All money withheld, whether assigned or not, shall be subject to being used by the State for the completion of the work in the event of the Contractor's default.

9.4 PROGRESS PAYMENTS - Payments under this contract shall be made only upon submission by the Contractor of an original invoice and 2 copies. The invoice shall specify the amount due less retainage and shall also certify that services requested under the contract have been performed by the Contractor according to the contract.

9.5 FINAL PAYMENT - Final payment will only be made after the Contractor receives final acceptance by the Director as provided in Section 8.8, and until the Contractor has filed with the Department the following:

- A. Consent of the surety, when applicable, to payment of the final estimate;
- B. Satisfactory evidence by affidavit that all debts resulting from the contract have been fully paid or satisfactorily secured;
- C. A certified copy of a tax clearance from both the Hawaii Department of Taxation and the Internal Revenue Service with the latest approval date stamp dated within the last two months; and
- D. Properly executed "Certification of Compliance for Final Payment" (SPO Form 22).

The filing of willfully false affidavits will disqualify the Contractor from bidding on future work of the Department.



## SECTION 10 - MAINTENANCE OF LANDSCAPED AREAS

**10.1 DESCRIPTION** - The work consists of furnishing all labor, materials, tools and equipment necessary for the maintenance of certain designated landscaped areas, including viaducts and planter boxes (as applicable) within the highway right-of-way. A location plan for this project is attached to these specifications showing the areas for which landscaped maintenance services are to be provided.

The work consists of the following:

- (A) Mowing.
- (B) Edging and trimming of grass along curbs, paved areas, structures and around trees and shrubs.
- (C) Weeding.
- (D) Edging and trimming of vines and ground cover.
- (E) Trimming and care of shrubs and trees.
- (F) Controlling vegetation intrusion of right-of-way line.
- (G) Watering.
- (H) Fertilizing.
- (I) Spraying pesticides and or herbicides.
- (J) Clearing gutters, swales and ditches.
- (K) Removing and disposing rubbish and debris, including waste material resulting from the work activities of (A), (B), (C), (D), (E), (F) and (J) mentioned above, from all of the landscaped and shoulder areas.

**10.2 INSPECTION OF PLANS AND OF AREAS TO BE MAINTAINED** - A set of detailed plans showing the limits of the areas and sprinkler system(s) to be maintained will be available for inspection at the Oahu District Baseyard Office at 727 Kakoi Street, Honolulu, Hawaii 96819, from the first day of advertising for bids up to and including the day of bid opening. In case of dispute over limits of work areas, the limits shown on the detailed plans shall govern. This project is located adjacent to a highway widening project so it is strongly recommended that the Contractor meet with District personnel and discuss the plans and specifications prior to submitting his proposal.

At the scheduled optional pre-bid meeting indicated in the Notice to Bidders, the Maintenance Engineer or his representative will be available at the Oahu District conference room to meet with members of the prospective bidder's firms to provide bidders with additional details.

Optional on-site inspection of the areas to be maintained may be conducted for prospective bidders immediately after the pre-bid conference.

**10.3 CONTRACT PERIOD, OPTION TO EXTEND AND WORK FORCE** - The period of the contract shall be for twelve (12) months from the date indicated in the "Notice to Proceed" from the Department with options to extend for two (2) additional twelve - (12) month periods without rebidding, upon mutual agreement in writing prior to the contract expiration date, and the Contractor be paid the amount specified for the second year and/or third year in the Proposal Schedule as appropriate. Failure by the Contractor to execute the amendment to the contract within the ten (10) days specified under Section 3.6, of the Specifications, may be cause for cancellation of the written agreement to extend the contract and may be subject to disqualification from bidding future projects for two (2) year period in accordance with Section 2.7, Disqualification of Bidders, of the Special Provisions.

It is estimated that the Contractor's work force will consist of employees actually physically performing fieldwork for approximately one hundred fifty (150) man-hours per week.

The Contractor shall provide a minimum of one (1) person who has (2) years of practical experience on nursery/horticulture work. The Contractor shall submit name and qualifications of person to the State for approval prior to commencement of the project. The State reserves the right to disqualify the person based on performance anytime during the contract. Upon disqualification, the Contractor has ten (10) working days to submit a qualified replacement.

#### **10.4 MATERIALS**

- (A) **WATER** - The State will furnish water at no cost to the Contractor. The Contractor shall take appropriate measures to insure that water is not wasted.
- (B) **FERTILIZER** - The State will furnish fertilizer at no cost to the Contractor. The fertilizer will be available at the Highways Division's Oahu District Baseyard, 727 Kakoi Street (Shafter Flats), Honolulu, Hawaii, or at a supplier's warehouse, as directed by the Engineer.

The Engineer will determine the appropriate time and necessary quantity for each fertilizer application and will notify the Contractor of the same. The Contractor must have a requisition processed and completed before taking fertilizer. The Contractor will submit a record of: area where the fertilizer was used, date of application and amount used.

- (C) **PESTICIDE & HERBICIDE** - Insecticides, fungicides and other pesticides shall be applied as needed to control insect pest and disease. Herbicides may be used for weed control. The Contractor shall obtain written approval from the Engineer before using pesticides and or herbicides. Pesticides and or herbicides shall be furnished by the Contractor at his expense.

If the Contractor chooses to use restricted pesticides, the Contractor shall obtain a Category 6, Certification for Commercial Applicators for Restricted Pesticides from the Department of Agriculture. The processing, handling and application must be performed by a person or under the direct supervision of the person possessing the above certificate. A copy of the certificate shall be submitted to the Engineer.

All work shall be performed in strict compliance with the manufacturer's label and or Material Safety Data Sheet (MSDS) as applicable and in accordance with State, Federal and local regulations and laws. A copy of the MSDS shall be submitted to the Engineer as a part of his approval to use pesticide and or herbicide and a copy shall be maintained by the Contractor at the job site during processing, handling and application of pesticides and or herbicides.

**10.5 MAINTENANCE METHODS** - All work shall conform to the best horticultural practices.

- (A) **MOWING** - All turf shall be mowed uniformly once every two (2) weeks when moisture is abundant. During long dry periods, grass height shall govern mowing frequency. The turf height shall be from one and one-half (1 ½) to two (2) inches on medians and areas with foot traffic and from four (4) to six (6) inches on other open areas along the highway for erosion control. A bag or chute shall be used to remove excess cuttings or the area may be raked. All trimmings shall be removed by the end of each workday.
- (B) **EDGING AND TRIMMING OF GRASS** - Trimming and edging of all turf cover along sidewalks, roadways, plant beds or structures shall be incidental to turf mowing.
- (C) **WEEDING** - All landscaped areas, including turf areas, shrub and hedge areas, ground cover areas, erosion control planted areas, and areas along the project boundaries (right-of-way lines, fence lines, etc.) shall be weeded to remove noxious vegetation and encroaching noxious vegetation. The weeding cycle shall be continuous as needed. Weed infestation shall not exceed ten percent (10%) of each designated area. A complete weeding of all landscaped areas shall be made six (6) months after commencement of work and immediately prior to completion of contract.

Conspicuous and deleterious weeds shall be removed by its roots in all landscaped areas. Removal by cutting or topping at the ground line will not be allowed. This requirement shall be strictly enforced. In maintenance areas without landscaping but only vegetative cover for erosion control purposes, cutting or topping of weeds will be allowed at the Engineer's discretion.

- (D) **EDGING AND TRIMMING OF VINES (AS APPLICABLE) AND GROUND COVER** - Vines and ground cover shall be edged and/or trimmed by the best horticultural practice as required to maintain a neat appearance and safe travelway. Vines or ground cover shall not be allowed to overgrow shrubbery, signs, street lights, guardrails or other structures, except fence lines, unless otherwise instructed. The creeping fig vines, which are trained to grow up the viaduct columns and abutments, shall be cut five (5) feet from the ground. The cut portions shall be removed immediately off the structure. This work shall be done six (6) months after commencement of the work and immediately prior to completion of the contract. Trimming of fig vines away from lights, signs and drain spouts or as directed is incidental to this work and shall be continuous as needed. Ground cover shall be maintained at a uniform height not exceeding twelve (12) inches or not less than six (6) inches above ground and shall be cleared from around all sprinkler heads, valves and other utilities. All vines and ground cover not desired shall be rooted out of the area.
- (E) **TRIMMING AND CARE OF SHRUBS AND TREES** - Shrubby and trees shall be

maintained and trimmed by the best horticultural practice as required to maintain a healthy and vigorous growth. Shrubs, wherever needed to, shall be trimmed a minimum of every six (6) months or more often as directed by the Engineer to prevent overgrowth, to maintain a neat appearance, to foster shrub brush out and to eliminate dead wood.

The Contractor shall trim trees to maintain a clear space below. Height of the space, measured from the grade directly below the affected branch area shall be fifty percent (50%) of the tree height or ten (10) feet, whichever is lower. For purpose of clearing signs, the Contractor shall be responsible for trimming tree branches up to ten (10) feet in height of all trees affecting the sight distance to the sign. Trimming of trees and shrubs to eliminate traffic hazards and to make traffic signs visible at all times shall be continuous as needed within the scope mentioned above. Traffic signs shall be visible at all times. The limbs shall not hang over the travelway. Stakes and guy wires shall be adjusted, or if need to, removed as determined by the Engineer to prevent damage to the trees and to reduce hazards to the maintenance personnel. A clear area of approximately three (3) feet shall ring young trees and shrubs to prevent mowing, damage and choking.

If the Contractor notices that traffic signs are not visible after trimming up to ten (10) feet, the Engineer shall be notified immediately.

The Contractor shall replace at his or her own expense all desired vegetation that dies due to neglect or malpractice. The Contractor shall be responsible for removing all dead young trees, ground cover or shrubs, and for the subject landscape restoration immediately. Should the Contractor fail to carry out this task, the work shall be done by others and the cost shall be borne by the Contractor. If the Contractor can substantiate that the cause of death of desired vegetation was not due to neglect or malpractice, the State will furnish a similar type plant, which will be replanted and maintained by the Contractor, at no additional cost to the State.

- (F) VEGETATION INTRUSION OF RIGHT-OF-WAY LINE - Contractor shall be responsible for controlling of all undesirable vegetation intrusions into right-of-way areas from the adjoining properties. In extreme cases, the inspector who is responsible for the areas shall work with the Contractor to get the property owners to cooperate in controlling the intrusions. Ultimately, it is the Contractor's responsibility to control or mitigate all undesirable vegetation intrusions.
- (G) WATERING - The watering cycle shall be in accordance to the plant's needs to maintain a healthful, vigorous and lush growth. Watering problems shall be called to the attention of the Engineer immediately to prevent plant damage.

The Contractor shall be responsible for the control of the sprinkler system, and shall minimize and conserve the use of water whenever possible.

The Contractor shall perform the following work:

1. Monitor the landscaped areas for water need;
2. Water the landscaped areas as needed;

3. Promptly report all deficiencies of sprinkler system pressure lines and the control clocks to the Engineer for repair;

The Engineer may require the Contractor to submit a detailed monthly schedule of watering on landscaped areas, monitoring the sprinkler systems and maintenance of the systems within thirty (30) days from the date specified in a written letter. Contractor shall report to the Engineer on the status of the sprinkler systems no less than once every six (6) months.

The Contractor shall also have control of the clocks. Should controller clocks malfunction, report the condition immediately to the Engineer. If the condition cannot be resolved, the Contractor shall water the landscaped areas manually by turning on and off the sprinkler system from the individual control valve(s). The Contractor shall be provided with keys (to be returned at the end of the contract; not considered a sprinkler part) to the sprinkler control clocks and if requested, a set of sprinkler plans for the areas with sprinkler system(s).

- (H) FERTILIZING - All desired vegetation shall be fertilized upon request by the Engineer to maintain a lush and vigorous appearance. Fertilizer shall be applied by mechanical apparatus, centrifugal throw spreader or motorized spreader at the rate of five hundred (500) pounds per acre or as directed by the Engineer.
- (I) PESTICIDE & HERBICIDE - The Contractor shall maintain a record of all pesticides and herbicides used on the project including the name of the pesticide or herbicide, location and areas of application, dates of application, rates of application and total quantity used per day. A copy of the record shall be submitted to the Engineer weekly or as requested. Certification requirement is also mentioned in Section 10.4(C), of the Specifications.

Any damage to vegetation, man, environment or other property, within or outside the highway right-of-way due to the use of pesticides and or herbicides by the Contractor shall be the sole responsibility of the Contractor. Damaged desired plants will be replaced at the Contractor's expense.

- (J) CLEARING GUTTERS, SWALES AND DITCHES - The Contractor shall clear and maintain lined drainage ditches, swales and roadway gutters of vegetation, rock, silt and mud, papers, bottles, cans and maintain these areas clear of debris and growth. Earth drainage ditches swales and gutters will be turf maintained the same as the areas indicated above. All drainage culverts under roadways and embankments shall be maintained by the State. The Contractor shall notify the State immediately of any blockage detected during normal landscape work.
- (K) REMOVAL OF RUBBISH AND DEBRIS - The Contractor shall remove all rubbish and debris from all of the landscaped and the shoulder areas including those of viaducts up to the edge of the travelway (as applicable to the project). Rubbish and debris on roadways, which originate from the landscape maintenance work, shall be removed by

the Contractor before the end of each workday or immediately if it creates a traffic hazard.

Litter in landscaped areas, gutters and shoulders (paper, cigarette butts, bottles, cans, etc.) shall be removed when found and a general clean up shall be conducted as often as needed but not less than twice per week to maintain a neat and clean appearance.

Debris and rubbish shall be disposed of away from the highway right-of-way. Burning of rubbish and debris in the highway right-of-way is prohibited.

10.6 CHARACTER OF WORKMEN - The Contractor shall employ workers who have knowledge of the care and cultivation of lawns, plants, shrubs, vines and trees, and of the use and operation of maintenance equipment and hand tools. If, in the judgment of the Engineer, any worker appears to be incompetent, he shall be removed from the project upon notice given by the Engineer to the Contractor.

10.7 WORK SCHEDULE - The Contractor shall bring the project up to specifications within thirty (30) days of the contract's Notice to Proceed date. If the Contractor is unable to bring the project up to specifications within thirty (30) days, he shall request a time extension from the Engineer. Failure to bring the project up to specifications or to request a time extension may result in an unsatisfactory rating for this period. It is the Contractor's responsibility to insure that adequate labor, equipment, and tools are provided for landscape maintenance.

The Engineer may require the Contractor to furnish a weekly or two-work-week schedule detailing when, where, the number of workers and what type of work the Contractor plans to do for each day of the schedule for a work period of not less than three (3) days per week. The schedule shall be submitted on the first day of the period and may be revised by the State at any time. The Contractor shall maintain and revise the work schedule to be current at all times. Progress payments shall be withheld until such time as a satisfactory work schedule is received by the Engineer. The State reserves the right to instruct the Contractor to work in areas other than his scheduled areas if such areas require immediate attention.

10.8 BASIS FOR PAYMENT - Maintenance of landscaped areas will be paid for on the following basis:

A. Earnings. Computed as follows:

1. Monthly earnings = 
$$\frac{\text{Amount bid on Item No. 10, 10A or 10B of the Proposal Schedule}}{12 \text{ months}}$$
2. Miscellaneous Work - Miscellaneous Work (Bid Item 14) will be used only at the discretion of the Engineer for additional miscellaneous work within the project area. The amount shall be negotiated in a manner similar to Section 4.5 - PRICE ADJUSTMENT.

- B. Deductions. If the Contractor fails to maintain the designated landscaped areas satisfactorily as required in Section 10 – MAINTENANCE OF LANDSCAPED AREAS, a deduction from the monthly earnings will be made as follows:

Deductions = Percent (%) estimated by the State as incomplete or unsatisfactory work X  
monthly earnings

The deduction(s) will be retained by the State and will not be paid to the Contractor. An explanation report with substantiating evidence shall be filed by the Engineer.

- C. Total Monthly Payments. The total monthly payments payable to the Contractor for maintenance of landscaped areas will be the monthly earnings plus applicable Miscellaneous minus the above deduction(s) as may be applicable.

Refer to Section 9.4, Progress Payment of the Special Provisions for the required information on invoices.

## SECTION 11 - SPRINKLER SYSTEM REPAIR AND MAINTENANCE

11.1 SPRINKLER MAINTENANCE WORK - The work shall consist of furnishing labor, materials, tools and equipment necessary for maintaining the sprinkler system from and including the remote control valves to the sprinkler heads. The work also includes adjusting time clocks for proper irrigation schedule (approved by the Project Engineer) and repair leakages of the sprinkler system portion from and including the remote control valves to the sprinkler heads. Replacement parts will be ordered by the Contractor and paid for by the State under Bid Item No. 11. The Contractor shall submit invoices of all authorized parts to the Engineer for payment.

On slopes where no vehicles traverse, plastic valve boxes are acceptable. On flat areas, concrete valve boxes with metal covers are required.

The Contractor shall start repairing any damages of the sprinkler system within forty-eight (48) hours of detection or from the time of notification by the State maintenance inspector.

Deductions shall be made from the monthly progress payments due to the Contractor for non-performance. Amount of the deductions shall be in proportion to areas affected by the sprinkler malfunctions and damage to landscape resulting from Contractor's negligence or incompetence. Near the conclusion of the contract period, a thorough inspection of the sprinkler systems shall be conducted by the State as part of the project final inspection. All deficiencies found shall be corrected to the satisfaction of the State before the conclusion of the contract. Should deficiencies go uncorrected without justification, State sprinkler repair crews shall do all the needed repairs and backcharge the Contractor by deducting from the final payment.

The Contractor shall provide a minimum of one (1) sprinkler technician to be in charge of the sprinkler maintenance and repair work.

11.2 MATERIALS - It is intended that the Contractor shall reuse salvable materials wherever feasible. Any salvable materials damaged through the Contractor's negligence shall be replaced at his expense. Materials will be subject to inspection at any time. Failure of the State's inspector to note faulty material or workmanship during construction will not relieve the Contractor of his responsibility for removing or replacing such materials and restoring the system to working order at his expense.

11.3 SPRINKLER TECHNICIAN - A sprinkler technician shall have a minimum of one (1) year experience in all phases of sprinkler system installation and maintenance work. He or she shall be capable of reading plans and following instructions.

The Contractor shall submit name and qualifications of the sprinkler technician to the State for approval prior to commencement of the project. The State reserves the right to disqualify the sprinkler technician based on the work performance anytime during the contract. The Contractor has ten (10) working days to submit a qualified replacement.



11.4 GENERAL - All work shall conform to the most current requirements of Section 616 - Sprinkler System of the "Hawaii Standard Specifications For Road, Bridge and Public Works Construction, 1994, Highways Division, Department of Transportation as amended."

11.5 PAYMENT - Bid Items 12, 12A, or 12B are for maintaining the sprinkler systems from and including the remote control valves to the sprinkler head.

The Contractor shall estimate the total labor cost to maintain the system for the duration of the projects, including any extension(s) as stated in Section 10.3, and place their applicable annual estimate.

- A. Earnings. Computations for the monthly earnings for the sprinkler system maintenance is computed as follows:
- (1) Monthly earnings = 
$$\frac{\text{Amount bid on Item No. 12, 12A or 12B of the Proposal Schedule}}{12 \text{ months}}$$
  - (2) Replacement Parts (Bid Item No.11) – shall be paid as specified in Section 11.1, Sprinkler System Maintenance Work as applicable.
  - (3) Miscellaneous Work (Bid Item No. 14) will be used only at the discretion of the Engineer for additional miscellaneous work within the project area. The amount shall be negotiated in a manner similar to Section 4.5 - PRICE ADJUSTMENT.
- B. Deductions. Deductions for failing to perform the required sprinkler maintenance as specified will be computed as outlined in Section 11.1, Sprinkler Maintenance Work, of the Specifications.
- C. Total Monthly Payments. The total monthly payments payable to the Contractor for sprinkler system maintenance work will be the monthly earnings plus applicable Miscellaneous minus the above deduction(s) as may be applicable.

It is the sole responsibility of the Contractor to ensure the proper operations of the sprinkler systems.

END PROJECT  
(Both Westbound  
& Eastbound)

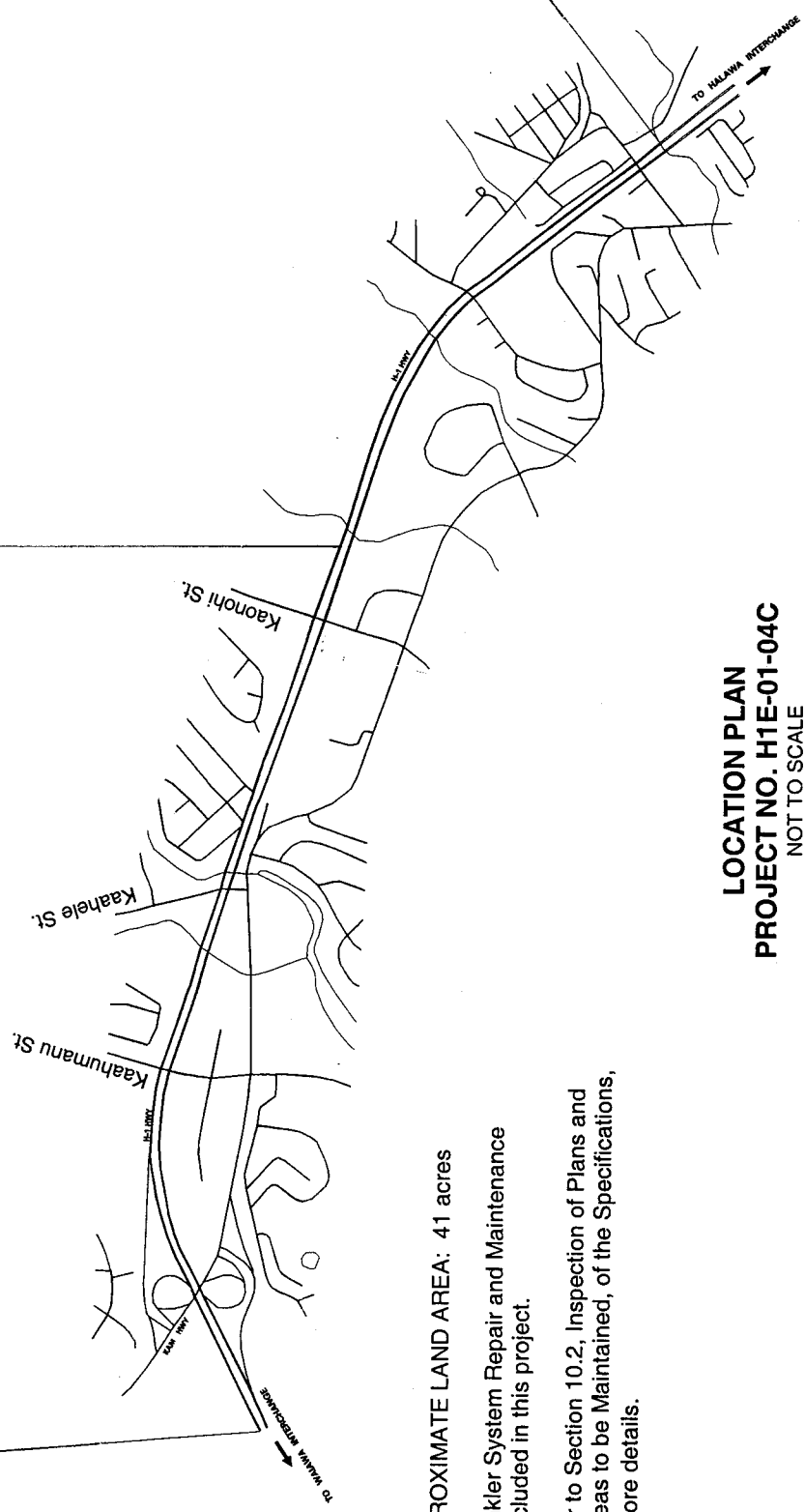
BEGIN PROJECT  
(Eastbound)  
VICINITY OF WAI'AU  
(IC MP 10.30)

LIMITS OF PROJECT NO. H1E-01-04C (EASTBOUND)

BEGIN PROJECT  
(Westbound)  
VICINITY OF  
KAONOHI  
STREET  
(MP 11.85)

LIMITS OF PROJECT NO. H1E-01-04C  
(WESTBOUND)

ON-GOING CONSTRUCTION AREA - NOT IN CONTRACT  
(WESTBOUND ONLY)



APPROXIMATE LAND AREA: 41 acres  
Sprinkler System Repair and Maintenance  
**IS** included in this project.  
Refer to Section 10.2, Inspection of Plans and  
of Areas to be Maintained, of the Specifications,  
for more details.

**LOCATION PLAN**  
**PROJECT NO. H1E-01-04C**  
NOT TO SCALE

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HONOLULU, HAWAII

P R O P O S A L

PROPOSAL TO THE STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS DIVISION

PROJECT: MAINTENANCE OF LANDSCAPED AREAS, H-1  
FREEWAY, WAI'AU TO AIEA STREAM, DISTRICT OF  
HONOLULU, ISLAND OF OAHU.

PROJECT NO: H1E-01-04C

CONTRACT TIME: Twelve (12) months from date indicated in the Notice to  
Proceed from the Department with options to extend as  
provided for in Section 10.3, of the Specifications.

LIQUIDATED DAMAGES: Refer to Section 10.8, Basis for Payment, and Section 11.1,  
Sprinkler Maintenance Work, of the Specifications for  
applicable deductions for incomplete work.

NOTE: **PERFORMANCE BOND IS REQUIRED FOR THIS  
PROJECT.**

**BID AND PAYMENT BONDS ARE NOT REQUIRED  
FOR THIS PROJECT.**

Director of Transportation  
Aliiaimoku Hale  
869 Punchbowl Street  
Honolulu, Hawaii 96813

Dear Sir:

The undersigned bidder declares the following:

1. It has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal.
2. It has not been assisted or represented on this matter by any individual who has, in a State capacity, been involved in the subject matter of this contract within the past two years.
3. It has not and will not, either directly or indirectly offered or given a gratuity (i.e. an entertainment or gift) to any State or County employee to obtain a contract or favorable treatment under a contract.

The undersigned bidder further agrees to the following:

1. If this proposal is accepted, it shall execute a contract with the Department to provide all necessary labor, machinery, tools, equipment, apparatus and any other means of construction, to do all the work and to furnish all the materials specified in the contract in the manner and within the time therein prescribed in the contract, and that it shall accept in full payment therefore the sum of the unit and/or lump sum prices as set forth in the attached proposal schedule for the actual quantities of work performed and materials furnished and furnish satisfactory security in accordance with Section 103D-324, Hawaii Revised Statutes, within 10 days after the award of the contract or within such time as the Director of Transportation may allow after the undersigned has received the contract documents for execution, and is fully aware that non-compliance with the aforementioned terms will result in the forfeiture of the full amount of the bid guarantee required under Section 1032D-323, Hawaii Revised Statutes.

2. That the quantities given in the attached proposal schedule are approximate only and are intended principally to serve as a guide in determining and comparing the bids.
3. That the Department does not either expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Director of Transportation, and that all increased or decreased quantities of work shall be performed at the unit prices set forth in the attached proposal schedule except as provided for in the specifications.
4. In case of a discrepancy between unit prices and the totals in said Proposal Schedule, the unit prices shall prevail.
5. Agrees to begin work within 10 working days after the date of notification to commence with the work, which date is in the notice to proceed, and shall finish the entire project within the time prescribed.
6. The Director of Transportation reserves the right to reject any or all bids and to waive any defects when in the Director's opinion such rejections or waiver will be for the best interest of the public.

Receipt is hereby acknowledged and complete examination is hereby expressly guaranteed of the following listed items: the specifications, the notice to bidders, the special provisions, if any, the proposal, the plans, if any, and the contract form.

The undersigned further agrees that if this proposal is accepted and the contract awarded, the bidder shall, prior to payment of the final estimate, execute the attached Certification of Compliance for Final Payment form (SPO Form-22).

The undersigned acknowledges receipt of any addendum, issued by recording in the space below the date of receipt.

Addendum No. 1\_\_\_\_\_

Addendum No. 3\_\_\_\_\_

Addendum No. 2\_\_\_\_\_

Addendum No. 4\_\_\_\_\_

The undersigned hereby certifies that the bid prices contained in the attached proposal schedule have been carefully checked and are submitted as correct, final and are net prices.

\_\_\_\_\_  
Bidder

By\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Telephone

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contact Person and Phone Number  
(If different from above.)

NOTE:

If bidder is a CORPORATION, the legal name of the corporation shall be set forth above, the corporate seal affixed, together with the signature(s) of the officer(s) authorized to sign contracts on behalf of the corporation. Please attach to this page current (not more than six months old) evidence of the authority of the officer(s) to sign on behalf of the corporation.

If bidder is a PARTNERSHIP, the true name of the partnership shall be set forth above with the signature(s) of the general partner(s) authorized to sign contracts on behalf of the partnership. Please attach to this page current (not more than six months old) evidence of the authority of the partner(s) to sign on behalf of the partnership.

If bidder is an INDIVIDUAL, the bidder's signature shall be placed in the space provided therefore on page PF-4.

If signature is by an agent, other than an officer of a corporation or a partner of a partnership, a POWER OF ATTORNEY must be on file with the Department prior to the opening of bids or submitted with the bid; otherwise, the bid may be rejected as irregular and unauthorized.



PROPOSAL SCHEDULE  
FOR  
MAINTENANCE OF LANDSCAPED AREAS,  
H-1 FREEWAY, WAIIAU TO AIEA STREAM  
PROJECT NO. H1E-01-04C

ISLAND OF OAHU

FIRST YEAR

Following is the itemized Proposal:

Item No.	Item	Unit Price	Amount
10	Maintenance of Landscaped Areas, H-1 Freeway, Waiau to Aiea Stream	Lump Sum	\$ _____
11	Replacement Parts	Allowance	\$ <u>5,000.00</u>
12	Sprinkler System Maintenance	Lump Sum	\$ _____
14	Miscellaneous Work	Allowance	\$ <u>20,000.00</u>
SUM OF ALL ITEMS (FIRST YEAR).....			\$ _____

PROPOSAL SCHEDULE  
FOR  
MAINTENANCE OF LANDSCAPED AREAS,  
H-1 FREEWAY, WAI AU TO AIEA STREAM  
PROJECT NO. H1E-01-04C

ISLAND OF OAHU

SECOND YEAR

Following is the itemized Proposal:

Item No.	Item	Unit Price	Amount
10A	Maintenance of Landscaped Areas, H-1 Freeway, Waiau to Aiea Stream	Lump Sum	\$ _____
11	Replacement Parts	Allowance	\$ <u>2,000.00</u>
12A	Sprinkler System Maintenance	Lump Sum	\$ _____
14	Miscellaneous Work	Allowance	\$ <u>20,000.00</u>
SUM OF ALL ITEMS (SECOND YEAR).....			\$ _____

PROPOSAL SCHEDULE  
FOR  
MAINTENANCE OF LANDSCAPED AREAS,  
H-1 FREEWAY, WAIIAU TO AIEA STREAM  
PROJECT NO. H1E-01-04C

ISLAND OF OAHU

THIRD YEAR

Following is the itemized Proposal:

Item No.	Item	Unit Price	Amount
10B	Maintenance of Landscaped Areas, H-1 Freeway, Waiau to Aiea Stream	Lump Sum	\$ _____
11	Replacement Parts	Allowance	\$ <u>2,000.00</u>
12B	Sprinkler System Maintenance	Lump Sum	\$ _____
14	Miscellaneous Work	Allowance	\$ <u>20,000.00</u>
SUM OF ALL ITEMS (THIRD YEAR).....			\$ _____
TOTAL AMOUNT.....			\$ _____
(For comparison of bid, sum of 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> year totals)			

PROPOSAL SCHEDULE  
FOR  
MAINTENANCE OF LANDSCAPED AREAS,  
H-1 FREEWAY, WAI'AU TO AIEA STREAM  
PROJECT NO. H1E-01-04C

ISLAND OF OAHU

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NOTES:

1. Bidder's bid price shall be inclusive of all direct and indirect costs and taxes.
2. Bids will be evaluated on the basis of the total amount bid and award made to the lowest responsible bidder.
3. The amount bid for Item 10A (second year) shall not be more than five percent (5%) of Item 10 (first year) bid amount. The amount bid for Item 10B (third year) shall not be more than eight percent (8%) of Item 10 (first year) bid amount. If the proposal submitted by the bidder indicates an amount in excess of the allowable maximum, the Total Amount in the proposal schedule shall be adjusted to reflect any such reduction. For the purposes of comparing bids and determining the contract price to be inserted in the contract awarded the bidder, if any is so awarded, the Total Amount (sum of three (3) years) adjusted in accordance with the foregoing shall be used and the bidder's proposal shall be deemed to have submitted for the amounts as reduced and adjusted in accordance herewith.

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HONOLULU, HAWAII

FORMS

Contents:

Contract

Performance Bond (Surety)

Performance Bond

Certificate for Performance of Services

Certification of Compliance for Final Payment (SPO Form 22)

Contractors Performance Rating

C O N T R A C T

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter referred to as "STATE", and \_\_\_\_\_ whose business and/or post office address is \_\_\_\_\_, hereinafter referred to as "CONTRACTOR";

WITNESSETH: That for and in consideration of the payments hereinafter mentioned, the CONTRACTOR hereby covenants and agrees with the STATE to furnish, perform and/or deliver and pay for all labor, supplies, materials, equipment and services called for in

" \_\_\_\_\_ ",

or such a part thereof as shall be required by the STATE, the total amount of which labor, supplies, materials, equipment and services shall be computed at the unit and/or lump sum prices set forth in the attached proposal schedule and shall be the sum of \_\_\_\_\_

DOLLARS (\$ \_\_\_\_\_ ) as follows:

TOTAL AMOUNT FOR COMPARISON OF BIDS.....\$

which shall be provided from State funds, all in accordance with the specifications, the special provisions, if any, the notice to bidders, the instructions to bidders, the proposal and plans, if any, for PROJECT NO. \_\_\_\_\_ on file in the office of the Director of Transportation. These documents, together with all alterations, amendments, and additions thereto and deductions therefrom, are attached hereto or incorporated herein by reference and made a part of this contract.

The CONTRACTOR hereby covenants and agrees to furnish, perform and/or deliver all labor, supplies, materials, equipment and services as provided herein for a period of TWELVE (12) months from the date indicated in the Notice to Proceed from the State, with an option to extend for additional TWELVE (12) month periods subject to the terms outlined in Section \_\_\_\_\_. The total term of this contract shall not exceed THIRTY SIX (36) MONTHS.

For and in consideration of the covenants, undertakings and agreements of the CONTRACTOR herein set forth and upon the full and faithful performance thereof by the CONTRACTOR, the STATE hereby agrees to pay the CONTRACTOR the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) in lawful money, such payment to be made, subject to such additions hereto or deductions therefrom heretofore or hereafter made, in the manner and at the time prescribed in the specifications and this contract.

Extras as provided in the specifications may be allowed, in addition to said sum, but shall not exceed \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) in lawful money and shall be provided from State funds.

The CONTRACTOR further agrees to execute the attached non-gratuity affidavit form prior to payment of the final payment by the STATE.

All words used herein in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. The use of any gender shall extend to and include all genders.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

STATE OF HAWAII

\_\_\_\_\_  
Director of Transportation

CONTRACTOR (Seal)

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Title

\*Signature must be acknowledged by a notary public.



## PERFORMANCE BOND (SURETY)

### KNOW TO ALL BY THESE PRESENTS:

That \_\_\_\_\_  
(full legal name and street address of Contractor)

as Contractor, hereinafter called Principal, and

\_\_\_\_\_  
(full legal name and street address of bonding company)  
as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of  
Hawaii, are held and firmly bound unto the \_\_\_\_\_  
(State/County entity)  
its successors and assigns, hereinafter called Obligee, in the amount of

DOLLARS (\$ \_\_\_\_\_), to which payment Principal and Surety bind themselves, their heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**Whereas,** the above-bound Principal has entered into a Contract with Obligee dated  
\_\_\_\_\_ for \_\_\_\_\_  
hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

**NOW THEREFORE,** the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance  
with the terms of the Contract as said Contract may be modified or amended from time to time; then this  
obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or  
additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or  
drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive  
notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become  
part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of  
Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this  
bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete  
such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal) \_\_\_\_\_  
Name of Principal (Offeror)

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Title

(Seal) \_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Title

\* ALL SIGNATURES MUST BE  
ACKNOWLEDGED BY A NOTARY  
PUBLIC

## PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

That we, \_\_\_\_\_  
(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the

\_\_\_\_\_  
(State/County entity)

its successors and assigns, as Obligee, hereinafter called Obligee, in the amount

\_\_\_\_\_  
(Dollar amount of Contract) DOLLARS (\$ \_\_\_\_\_),

lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heir, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- ☐ Legal Tender;
- ☐ Share Certificate unconditionally assigned to or made payable at sight to  
Description: \_\_\_\_\_;  
\_\_\_\_\_;
- ☐ Certificate of Deposit, No. \_\_\_\_\_, dated \_\_\_\_\_ issued  
by \_\_\_\_\_ drawn on  
\_\_\_\_\_ a bank, savings  
institution or credit union insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or unconditionally assigned to  
\_\_\_\_\_;
- ☐ Cashier's Check No. \_\_\_\_\_, dated \_\_\_\_\_ drawn  
on \_\_\_\_\_ a bank,  
savings institution or credit union insured by the Federal Deposit Insurance Corporation or the  
National Credit Union Administration, payable at sight or unconditionally assigned to  
\_\_\_\_\_;
- ☐ Teller's Check No. \_\_\_\_\_, dated \_\_\_\_\_ drawn  
on \_\_\_\_\_ a bank,  
savings institution or credit union insured by the Federal Deposit Insurance Corporation or the  
National Credit Union Administration, payable at sight or unconditionally assigned to  
\_\_\_\_\_;
- ☐ Treasurer's Check No. \_\_\_\_\_, dated \_\_\_\_\_ drawn  
on \_\_\_\_\_ a bank,  
savings institution or credit union insured by the Federal Deposit Insurance Corporation or the  
National Credit Union Administration, payable at sight or unconditionally assigned to  
\_\_\_\_\_;
- ☐ Official Check No. \_\_\_\_\_, dated \_\_\_\_\_ drawn  
on \_\_\_\_\_ a bank,  
savings institution or credit union insured by the Federal Deposit Insurance Corporation or the  
National Credit Union Administration, payable at sight or unconditionally assigned to  
\_\_\_\_\_;
- ☐ Certified Check No. \_\_\_\_\_, dated \_\_\_\_\_ accepted  
by a bank, savings institution or credit union insured by the Federal Deposit Insurance  
Corporation or the National Credit Union Administration, payable at sight or unconditionally  
assigned to \_\_\_\_\_;

**WHEREAS:**

The Contractor has by written agreement dated \_\_\_\_\_ entered into a contract with Oblige for the following Project: \_\_\_\_\_

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

**NOW THEREFORE,**

The Condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Oblige, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Oblige, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

**AND IT IS HEREBY STIPULATED AND AGREED** that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Oblige, its successors or assigns, in the event of a breach of any, or all, or any part of, covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Title

\*ALL SIGNATURES MUST BE  
ACKNOWLEDGED BY A NOTARY PUBLIC

CERTIFICATE FOR PERFORMANCE OF SERVICES

The undersigned bidder does hereby certify that in performing the services required for the MAINTENANCE OF LANDSCAPED AREAS, H-1 FREEWAY, WAI'AU TO AIEA STREAM, PROJECT NO. H1E-01-04C, DISTRICT OF HONOLULU, ISLAND OF OAHU it will fulfill the following conditions:

1. All applicable laws of the Federal and State governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and

2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the Director of Transportation. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the Director of Transportation has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by Section 103-55, HRS.

DATED at Honolulu, Hawaii, this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Name of Corporation, Partnership, or Individual

\_\_\_\_\_  
Signature and Title of Signer

Subscribed and sworn before me  
this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ Judicial  
Circuit, State of Hawaii  
My Commission Expires: \_\_\_\_\_

**Reference:** \_\_\_\_\_  
(Contract Number) \_\_\_\_\_  
(IFB/RFP Number)

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker’s Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

Moreover, \_\_\_\_\_  
(Company Name)  
acknowledges that making a false statement shall cause its suspension and may cause its  
debarment from future awards of contracts.

Date: \_\_\_\_\_

# CONTRACTOR PERFORMANCE RATING

(LANDSCAPING)

revised 3/25/04

PROJECT NO.: \_\_\_\_\_

DATE: \_\_\_\_\_

PROJECT TITLE: \_\_\_\_\_ CONTRACT NO.: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

	FACTOR	RATING *		COMMENTS
		SATISFACTORY	UNSATISFACTORY	
	<u>MANAGEMENT</u>			
1	Cooperation			
2	Channel of Communication			
3	Timely Payroll Submittals			
4	Insurance Adequate & Timely			
	<u>FIELD SERVICE</u>			
5	Sprinkler Repair & Maintenance			
6	Watering			
7	Mowing & Edging Turf			
8	Topping & Edging Groundcover			
9	Vegetation Is Clear Around Shrubs, Sprinklers, Structures, etc.			
10	Weed Control			
11	Tree & Shrub Care & Trim			
12	Fertilizer Application			
13	Pesticide Application			
14	Litter & Debris Pick-up			
15	Clean Ditches & Swales			
16	Traffic Control & Safety			
17	Overall Work Quantity			
18	Character of Workmen			
19	Equipment & Tool Adequacy			

RATED BY: \_\_\_\_\_  
STATE REPRESENTATIVE

RECEIVED BY: \_\_\_\_\_  
CONTRACTOR

\* Contractor is considered unsatisfactory if any factor is rated UNSATISFACTORY. Unsatisfactory rating maybe grounds for rejection of Contractor's bid on future projects for a period of two (2) years. Refer to Section 2.7 and 5.7, of the Special Provisions.